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No. 81-2342

In the Supreme Court of the United States

OCTOBER TERM, 1982

STEPHEN GONSALVES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends that the court of appeals erred in reversing an order dismissing his indictment on the ground that it was barred by the statute of limitations.

Petitioner was charged in a five count indictment returned in the United States District Court for the Southern District of California with conspiracy to import hashish (Count 1), in violation of 21 U.S.C. 952, 960 and 963; attempt to import hashish (Count 2), in violation of 21 U.S.C. 952, 960 and 963; conspiracy to possess hashish with intent to distribute (Count 3), in violation of 21 U.S.C. 846 and 841(a)(1); possession of hashish with intent to distribute (Count 4), in violation of 21 U.S.C. 841(a)(1); and use of a communication facility to facilitate the commission of controlled substance offenses, in violation of 21 U.S.C. 843(b). Since the charges arose out of a scheme to import hashish from Lebanon on August 5, 1975, five years and 56 days before the date of the indictment, the indictment also

alleged that the five-year statute of limitations was tolled under 18 U.S.C. 3290 while petitioner was a fugitive (Pet. App. A-2 to A-3 & n.2).

Following an evidentiary hearing, the district court found that the government had failed to prove that petitioner knew about the charges in the Southern District of California before the limitation period expired and that, accordingly, petitioner was not fleeing from this prosecution. The district court also rejected the government's alternative argument that the indictment was tolled because petitioner was fleeing from an unrelated indictment that had been returned in the District of Nevada, holding as a matter of law that fleeing from justice in one federal district does not toll the statute of limitations on unrelated charges in a different district. While agreeing with the district court's rationale as to the California charges, the court of appeals reversed, ruling that flight from the Nevada charges would toll the statute of limitations. It remanded the case to the district court to determine whether petitioner had made a good faith effort to surrender on the Nevada charges. (675 F. 2d 1050; Pet. App. A-1 to A-22).

Petitioner contends (Pet. 12-29) that the statute of limitations is tolled under 18 U.S.C. 3290 only when the person fleeing justice has a specific intent to avoid the process of a particular court and the government has shown due dilligence in obtaining the indictment from which he is alleged to have fled. Whatever the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied if the district court had denied his motion to dismiss. If petitioner is acquitted following a trial on the merits, his contentions will be moot. If, on the other hand, petitioner is convicted, he will then be able to present his contentions to this Court, together with any other claims he may have, in a petition for

a writ of certiorari seeking review of a final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[1]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

JULY 1982

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[1]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.

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